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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

SURGICAL INSTRUMENT SERVICE
COMPANY, INC.,

Plaintiff,

v.

INTUITIVE SURGICAL, INC.,
Defendant.

Case No. 3:21-cv-03496-AMO

JOINT STIPULATION AND
~~PROPOSED~~ ORDER REGARDING
INTUITIVE'S MOTION *IN LIMINE*
NO. 5

The Honorable Araceli Martínez-Olguín

1 Plaintiff Surgical Instrument Service Company, Inc. (“SIS”), and Defendant
2 Intuitive Surgical, Inc. (“Intuitive”) (collectively, the “Parties”) hereby stipulate as follows
3 regarding Intuitive’s Motion *in Limine* No. 5 (“Motion”) and respectfully request that the Court
4 endorse this stipulation with an order:

5 WHEREAS, on October 28, 2024, Intuitive served on SIS Intuitive’s Motion *in*
6 *Limine* No. 5, Dkt. 296;

7 WHEREAS, on November 7, 2024, SIS served on Intuitive an opposition to
8 Intuitive’s Motion, Dkt. 296;

9 WHEREAS, on November 25, 2024, this Court heard argument on Intuitive’s
10 Motion as part of the Pretrial Conference;

11 WHEREAS, on November 26, 2024, the Court issued a Minute Entry ordering
12 “counsel to meet and confer to propose a stipulated resolution to the Motion and submit any
13 additional papers by 12/3/2024”;

14 NOW THEREFORE, the Parties jointly submit the Proposed Order attached
15 hereto as Exhibit A, which provides that the Parties jointly stipulate and agree that:

16 1. SIS will not present evidence or argument to the jury stating or suggesting that
17 Intuitive made false or misleading statements to its customers.

18 2. Nothing in this Stipulation shall preclude SIS from:

19 a. Introducing into evidence documents or testimony stating or suggesting
20 that Intuitive’s statements to its customers, although not false or misleading, are nevertheless part
21 of what SIS alleges to be Intuitive’s overall anticompetitive, exclusionary conduct; or

22 b. Introducing into evidence documents or testimony stating or suggesting
23 that using modified EndoWrists with a reset use counter does not pose patient safety risks.

24 3. Nothing in this Stipulation shall preclude Intuitive from arguing that documents
25 or testimony subject to 2(a) or 2(b) are inadmissible for reasons unrelated to Intuitive’s Motion
26 *in Limine* No. 5.

The Parties respectfully ask the Court to enter the Proposed Order attached hereto as Exhibit A on the docket in this case. The Parties further agree that this Stipulation renders moot Intuitive's Motion *in Limine* No. 5.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Dated: December 3, 2024

By: /s/ Kenneth A. Gallo
Kenneth A. Gallo

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Dated: December 3, 2024

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E-Filing Attestation

I, Kenneth A. Gallo, am the ECF User whose ID and password are being used to file this document. In compliance with Civil Local Rule 5-1(i)(3), I hereby attest that each of the signatories identified above have concurred in this filing.

/s/ Kenneth A. Gallo

Exhibit A

~~PROPOSED~~ ORDER REGARDING INTUITIVE'S MOTION *IN LIMINE* NO. 5

On June 11, 2024, the Court entered its Schedule and Pretrial Order, which required the Parties to serve any motions in limine by October 28, 2024. Dkt. 235 at Section II.B. On October 28, 2024, Defendant served on Plaintiff Defendant's Motion *in Limine* No. 5, Dkt. 296. On November 7, 2024, Plaintiff served on Defendant an opposition to Intuitive's Motion, Dkt. 296.


The Parties now jointly stipulate and agree, and the Court so-orders, that:

1. SIS will not present evidence or argument to the jury stating or suggesting that Intuitive made false or misleading statements to its customers.
2. Nothing in this Stipulation shall preclude SIS from:
 - a. Introducing into evidence documents or testimony stating or suggesting that Intuitive's statements to its customers, although not false or misleading, are nevertheless part of what SIS alleges to be Intuitive's overall anticompetitive, exclusionary conduct; or
 - b. Introducing into evidence documents or testimony stating or suggesting that using modified EndoWrists with a reset use counter does not pose patient safety risks.
3. Nothing in this Stipulation shall preclude Intuitive from arguing that documents or testimony subject to 2(a) or 2(b) are inadmissible for reasons unrelated to Intuitive's Motion *in Limine* No. 5.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated December 4, 2024

BY THE COURT:


HON. ARACELI MARTINEZ-OLGUÍN
United States District Judge